

# EXHIBIT 16



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

NETLIST, INC., ( CAUSE NO. 2:21-CV-463-JRG  
)  
Plaintiff, ( )  
vs. ( )  
SAMSUNG ELECTRONICS CO., LTD., ( )  
et al., ( ) MARSHALL, TEXAS  
( MARCH 29, 2023  
Defendants. ) 9:00 A.M.

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VOLUME 2

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PRETRIAL CONFERENCE  
BEFORE THE HONORABLE RODNEY GILSTRAP  
UNITED STATES CHIEF DISTRICT JUDGE

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SHAWN McROBERTS, RMR, CRR  
100 E. HOUSTON STREET  
MARSHALL, TEXAS 75670  
(903) 923-8546  
shawn\_mcroberts@txed.uscourts.gov

1 an LDO is a converter or not. Nothing wrong with that.  
2 That's good litigation tactics. But the point is, is that  
3 they finally said, We don't think an LDO is a converter. We  
4 said, Of course an LDO is a converter in our opening, and  
5 Mr. McAlexander fully joined it.

6 So there can be a theoretical debate as to whether the  
7 disclosure was sufficient enough in the contentions, but we  
8 can't be mindreaders. If they don't disclose the  
9 non-infringement contention until the end of fact discovery,  
10 if we fairly disclose -- and we specifically told them it's  
11 the LDOs; in our PICs from the beginning we say it's the LDOs.  
12 And then at the end of fact discovery saying an LDO can't be a  
13 converter, there's really no other choice than to engage it in  
14 the expert report. It was fully disclosed in the first round  
15 and they had the right to respond.

16 THE COURT: Let me ask you this question. You just  
17 said it was fairly disclosed in the first round. How many  
18 rounds were there? How many iterations of these contentions  
19 were put out?

20 MR. SHEASBY: Four.

21 THE COURT: And was it addressed anywhere in the  
22 subsequent iterations beyond the first one?

23 MR. SHEASBY: That it was -- an LDO was a converter  
24 circuit? Every single one said the LDO was the converter  
25 circuit. We were consistent from the beginning. We never

1 changed it.

2 THE COURT: So you carried what was in the  
3 preliminary infringement contentions forward into subsequent  
4 iterations.

5 MR. SHEASBY: All the way. We've been saying LDO is  
6 the converter circuit from the beginning, and then at the end  
7 of fact discovery they say LDO can't be a converter circuit,  
8 and then we're in a situation to have to scramble.

9 THE COURT: All right. What else, Mr. Sheasby?

10 MR. SHEASBY: The alleged state of mind, this is  
11 sort of a difficult thing. There are highlights in the  
12 paragraph where Mr. -- Doctor Mangione-Smith hypothesizes  
13 about what Samsung's state of mind would be, but there are  
14 vast elements of that paragraph that just discuss the factual  
15 record about when Samsung was on notice, objectively on notice  
16 of certain things. And so based on the Court's order  
17 yesterday, I think the idea that an expert -- I think you said  
18 that for Mr. Halbert that experts should not be hypothesizing  
19 on the state of mind of --

20 THE COURT: That would apply here as well.

21 MR. SHEASBY: That would apply here as well. And  
22 that would be a blanket thing, but the paragraphs contain lots  
23 of perfectly appropriate things about notice and state of  
24 mind. So on those paragraphs I would just ask that the Court  
25 apply the same standard.

1           If the Court has any questions, I'll move on to the next  
2 one.

3           THE COURT: No. I mean, my intention here from the  
4 briefing and hearing Defendant's argument until you addressed  
5 it was to basically say Doctor Mangione-Smith is not going to  
6 be permitted to opine on Samsung's state of mind. Now, that  
7 should be adequate guidance without going back and taking  
8 paragraphs and saying this sentence is in and this sentence is  
9 out. And there's no reason why counsel for both sides can't  
10 do that with the kind of high-level guidance I'm giving. But  
11 that is the Court's guidance--the witness is not going to  
12 opine on Samsung's state of mind.

13           MR. SHEASBY: Okay. And then in terms of the Sung  
14 Mo Jung's deposition testimony, I think -- so first off,  
15 Doctor Mangione-Smith will testify that he read the entire  
16 deposition testimony, I believe. As to the --

17           THE COURT: This is the one with the errata?

18           MR. SHEASBY: Yes, this is the one with the errata.  
19 I don't think he has the memory to say, I read the pages of  
20 the errata or not. They were given to him. As to whether he  
21 physically read the errata, we don't know the answer to that  
22 because he doesn't remember it anymore. But we know that the  
23 original is part of the record, so you can't get away from the  
24 original. The way this works is you have the original and  
25 then they can also put in the corrected version. And Doctor

1 Mangione-Smith did quote from the original version and they're  
2 fighting about things from 'implements' to 'supports', that  
3 they change these individual words.

4 And there was no idea to be evasive or to sort of do  
5 anything underhanded. If Doctor Mangione-Smith publishes this  
6 testimony to the jury, depending on what testimony's admitted,  
7 we can publish the corrections as well. But there was no  
8 intention to play games. These are either minor amendments or  
9 improper amendments, and the courts have said that the  
10 testimony -- the original testimony is part of the record that  
11 he can consider. And they can certainly cross examine him on  
12 the fact there were these changes.

13 I can tell you we do not accept these changes as proper  
14 in many instances, and we'll actually be moving to strike the  
15 changes as outside the appropriate federal rules because they  
16 were substantive.

17 THE COURT: You will be moving to strike them?

18 MR. SHEASBY: Yes.

19 THE COURT: When is that going to be? The day we  
20 select the jury? This is pretrial.

21 MR. SHEASBY: So the way I think it would work is  
22 we designate the testimony, they counterdesignate the  
23 corrections, and then we'd object to the corrections.

24 THE COURT: Let me ask you this. Do you dispute  
25 Doctor Albert's representation that the errata was available

1 I HEREBY CERTIFY THAT THE FOREGOING IS A  
2 CORRECT TRANSCRIPT FROM THE RECORD OF  
3 PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.  
4 I FURTHER CERTIFY THAT THE TRANSCRIPT FEES  
5 FORMAT COMPLY WITH THOSE PRESCRIBED BY THE  
6 COURT AND THE JUDICIAL CONFERENCE OF THE  
7 UNITED STATES.

8  
9 S/Shawn McRoberts 03/31/2023

10 \_\_\_\_\_ DATE \_\_\_\_\_  
11 SHAWN McROBERTS, RMR, CRR  
12 FEDERAL OFFICIAL COURT REPORTER  
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Shawn M. McRoberts, RMR, CRR  
Federal Official Court Reporter